

IN THE COURT OF APPEALS OF IOWA

FILED

NOV 20 1984

CLERK SUPREME COURT

IN RE THE MARRIAGE OF LOREN L. ARP AND HOLLIE L. ARP

UPON THE PETITION OF
LOREN L. ARP,

Petitioner-Appellant,

AND CONCERNING
HOLLIE L. ARP,

Respondent-Appellee.

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Filed November 20, 1984

4-366
83-1485

Appeal from the Iowa District Court for Scott County, James R.
Haverkamp, Judge.

Petitioner-husband appeals a district court decision dismissing his
application to modify support provisions of the parties' dissolution decree.
AFFIRMED.

Harold J. De Lange, II, of Wehr & De Lange, Davenport, for petitioner-
appellant.

Morton A. Teitle, Davenport, for respondent-appellee.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

A request to modify child support provisions of the parties' divorce ⁸decree was denied by the trial court and the petitioner-father asserts the court erred in its decision. We affirm.

The marriage of the parties was dissolved after fifteen years on February 24, 1982. They have three minor children, custody was given to the respondent, Hollie Arp, and petitioner Loren was ordered to pay \$1650 total in child support along with paying for the children's insurance and other medical bills.

Loren says that the circumstances of the parties have changed warranting a reduction in the child support he pays. The change he refers to is an alleged reduction in his income. He says at the time of the divorce trial he earned \$73,952, while in 1982 his income dropped to \$59,609.96. He has remarried since the divorce and his wife earns \$10,927 per year. Loren also claims his expenses have increased by \$12,408 from 1981 to 1982. He reports monthly income of \$3142.42 and expenses of \$6000, comparing this to Hollie's monthly income of \$2200 and expenses of \$2043.

In order to obtain a modification of his child support payments, Loren must show there has been a material and substantial change in circumstances from the time the original divorce decree was entered, and those circumstances must not have been within the contemplation of the court at that time. Page v. Page, 219 N.W.2d 556, 557 (Iowa 1974); Iowa Code § 598.21(3)(1983). Further, when the modification sought applies to child support, the change in circumstances must relate to the child's welfare. In re Marriage of Brown, 247 N.W.2d 2, 4 (Iowa 1976). In determining the economic circumstance situation of the parties, overall financial conditions may be considered, including the fact that one of the parties has remarried and support is provided by that spouse. Page v. Page, 219 N.W.2d at 558.

Loren says his income has dropped because he is in private practice as a physical therapist and his business has declined. However, when considering the contributions made by his second wife, their total income is \$70,536, a drop from his claimed 1981 income of only \$3416. In addition, the trial court at the time of the divorce indicates in its decree that it considered his income to be \$50,000, and Hollie's income at \$12,000. This results in an increase rather than a drop in Loren's current income from the income within the contemplation of the court at the time of the decree. Hollie says she is seeking part-time work now, but is currently unemployed. She says it is difficult for her to work more than part-time because their son has a glycogen storage disease which causes him to tire easily and occasionally come home early from school. The decrease in income, if any, is in Hollie's income and not Loren's.

Loren's claimed increased expenses include losses incurred because of several business ventures that have not fared well. He borrowed money in attempts to set up two different fitness centers which have not produced income. Many of his losses reported occurred because he also operates a farm. Hollie argues through her counsel that many of these losses are actually tax shelters, as indicated by her figures showing Loren received refunds in federal incomes taxes in 1982 of \$7079 and in state taxes of \$1067. At the hearing her attorney indicated his calculations showed Loren paid only \$4000 in 1982 on reported \$70,000 income. Loren also admitted at the hearing that many of the expenses reflected in his financial statement were considered at the time of the divorce decree.

The trial court concluded that regardless of the amount of paper shuffling on Loren's behalf, his income is nearly the same as that reported at the time of the decree. We are inclined to agree. Voluntary changes in a party's circumstances are not sufficient to warrant modification of a divorce decree. Ellis v. Ellis, 262 N.W.2d 265, 268 (Iowa 1978). Loren has incurred extra expenses because of his

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voluntary decisions to remarry and to enter into several business ventures. There is no testimony showing the expense of raising his three children by his first marriage has decreased. We find there has been no substantial change in circumstances not within the contemplation of the court at the time of the decree, and affirm the decision to deny the request for modification.

Hollie has asked for contribution to the attorney fees and costs incurred on this appeal. We consider the factors set out at In re Marriage of Castle, 312 N.W 2d 147, 150 (Iowa Ct App. 1981). Without setting the amount of fees to be charged by Hollie's attorney, we hold Loren shall contribute \$1000 to these costs.

AFFIRMED.